UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/34/Add.1
10 July 1996

ENGLISH
Original: RUSSIAN

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports due in 1996

Addendum

UKRAINE*

[19 June 1996]

* For the initial report of Ukraine, see CAT/C/5/Add.20; for its consideration, see CAT/C/SR.52 and 53 and Official Records of the General Assembly, forty-fifth session, Supplement No. 44 (A/45/44) paras. 503-532. For the second periodic report, see CAT/C/17/Add.4; for its consideration, see CAT/C/SR.125 and Add.2 and Official Records of the General Assembly, forty-eighth session, Supplement No. 44 (A/48/44), paras. 116-132.

GE.96-17256 (E)

I. INTRODUCTION

1. This report is submitted pursuant to article 19, paragraph 1, of the Convention, which entered into force in Ukraine on 24 February 1987.

2. It has been compiled in accordance with the general guidelines regarding the form and content of reports to be submitted by States Parties under article 19, paragraph 1, of the Convention.

3. It covers the period from 1992 to 1996.

4. It was prepared as a collaborative effort by the Ukrainian Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Internal Affairs, the Office of the Public Prosecutor, the Security Service and the Supreme Court.

5. Since the submission of its second periodic report in 1992, Ukraine has followed an unswerving policy of advancing the interests of the individual over those of society and of according primacy to international law, as reflected in the new draft Ukrainian constitution. On 22 December 1991 the Supreme Council of Ukraine passed the Act on Ukraine's International Treaties, article 17 of which reads:

> 1. International treaties concluded and subject to ratification by Ukraine shall constitute an inseparable part of Ukrainian national legislation and shall be applied in the same manner as the stipulations of national legislation.
>
> 2. If an international treaty to which Ukraine is party, concluded by means of a law, lays down rules other than those established in Ukrainian legislation, the rules laid down in the international treaty shall apply.

6. On 9 November 1996, Ukraine joined the Council of Europe. It is working hard to bring its legislation into line with European norms and standards. An Order by the President of Ukraine on 11 March 1996 set up a State Interdepartmental Commission on the incorporation of Council of Europe norms and standards into Ukrainian legislation.

7. A draft constitution has been drawn up and was, when this report was submitted, before the Supreme Council of Ukraine for consideration. The draft has been much praised by foreign experts.

8. In March 1996 the Ukrainian Ministry of Justice drew up a draft outline of State legal policy on human rights. Work is proceeding on plans for legal and judicial reform, but completion of the reform has been delayed pending adoption of the constitution.

9. Various working groups comprising experts from all parts of the Government apparatus concerned have drawn up and submitted for consideration by Supreme Council commissions drafts of a Ukrainian penal code, a code of criminal procedure, a civil code, a code of civil procedure, and a penal correction code, all grounded in basic international legal norms and standards. In parallel, the existing codes have been amended and amplified.

10. As this report was being compiled, the European Convention for the prevention of torture and inhuman or degrading treatment or punishment was awaiting signature.

11. On 9 November 1995, at the official ceremony marking its entry into the Council of Europe, Ukraine signed the European Convention on Human Rights and Protocol No. 2 to the Convention. Work on the documents required for ratification of the Convention and related protocols is in progress.

12. Since it proclaimed its independence, Ukraine has been taking steps to limit the death penalty in existing legislation. The number of crimes for which a death sentence can be handed down has fallen from 19 to 5. These now are:

making an attempt on the life of a figure of State (art. 58 of the Penal Code);

making an attempt on the life of a representative of a foreign State (art. 60 of the Penal Code);

wilful homicide in aggravating circumstances (art. 93 of the Penal Code);

making an attempt on the life of a militiaman, a national guardsman or a member of the armed forces in connection with his efforts to maintain law and order (art. 230 para. 2 of the Penal Code).

Despite these important changes, however, there has been a marked tendency in recent years for the numbers of death sentences handed down and carried out in Ukraine to increase. In 1991, for example, 112 people were sentenced to death and 42 were executed; in 1992, 103 were sentenced and 79 executed; in 1993, 317 were sentenced and 78 executed; in 1994, 143 were sentenced and 103 executed; and in 1995, 191 were sentenced and 149 executed. It should be noted that the process of signing and ratifying Protocol No. 6 to the European Convention on Human Rights, which calls for the death penalty to be abolished in peacetime, is under way.

13. The Supreme Council of Ukraine also passed the following legislation relating to the implementation of the Convention between 1992 and 1996:

An Act amending and amplifying several pieces of Ukrainian legislation in connection with the proclamation of Ukraine as an independent State (extending the powers of the courts and the Public Prosecutor's Office, revising the procedure whereby citizens can appeal against the imposition of administrative penalties by officials and official bodies, etc.)

An Act amending the Penal Correction Code (bringing the conditions in which convicts are held into line with international norms and standards)

An Act amending and amplifying the codes of criminal and civil procedure (as regards reimbursement of the costs of in-patient treatment for crime victims)

An Act on pre-trial detention

An Act amending the Code of Criminal Procedure (enhancing the right to defence)

An Act on the legal profession

An Act on the status of judges

An Act on the procedure for compensating citizens who have suffered injury owing to illegal action on the part of investigative and (judicial) examining bodies, the Public Prosecutor's office or the courts

An Act on the bodies and services dealing with minors

An Act on the Security Service of Ukraine

An Act on the work of detectives

II. NEW MEASURES AND CHANGES AFFECTING IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE

Articles 1-16

Article 1

14. In accordance with article 7 of the Judicial System Act, justice in Ukraine is administered in precise conformity with Ukrainian legislation. In instances provided for under international agreements, the Ukrainian courts apply the law in accordance with the agreements concerned (Act of 24 February 1994). Judges and people's assessors are independent in their administration of justice in criminal matters, being subservient to the law alone.

15. Judges and people's assessors deal with criminal matters on the basis of the law, working in conditions that exclude extraneous influence on the courts (art. 18 of the Code of Criminal Procedure).

Articles 2 and 3

16. Neither the law nor practice has changed as regards these provisions. Ukraine is in compliance with these articles.

Article 4

17. The Act of 11 July 1995 amending and amplifying certain Ukrainian legislation as regards the responsibility of officials introduced changes in articles 165, 166 and 167 of the Penal Code, increasing criminal liability for abuse of authority. Article 166 makes it a criminal offence to act in excess of one's authority or official powers. The deliberate performance by an official of an action manifestly exceeding the rights and authority extended to him by law is punishable, if actual harm is caused to State or public

interests or to the legally protected interests of individual persons or bodies corporate, by two to five years' imprisonment.

18. Exceeding one's authority or official powers, if accompanied by violence, the use of a weapon, or actions painful or demeaning to the victim, is punishable by three to eight years' imprisonment.

19. Officials whose actions engender serious consequences are liable to 5 to 12 years' imprisonment.

20. Between 1993 and 1995 the Ministry of Internal Affairs received:

- 125 complaints of illegal detention, arrest or search involving the use of physical force (29 in 1993, 56 in 1994, 34 in 1995);

- 142 complaints of rudeness to citizens (84 in 1993, 24 in 1994, 34 in 1995);

- 2,800 complaints of other improper conduct (834 in 1993, 873 in 1994, 1,093 in 1995).

21. Over the same period, 475 employees of internal affairs organs were found guilty of abuse of authority (107 in 1993, 138 in 1994, 230 in 1995). Of these, 226 were convicted of overstepping their authority or abusing their official position (figures on employees of internal affairs organs supplied by the Ministry of Internal Affairs).

22. One hundred and thirty-three people were convicted in 1995 under Article 166, paragraph 2, of the Ukrainian Penal Code, which makes it an offence to act in excess of one's authority or official powers if this is accompanied by violence, the use of a weapon or by actions painful or demeaning to the victim. Thirty-three of them were sent to prison; 27 were put on probation; 48 were given suspended sentences; 1 was sentenced to corrective labour; and 3 were given fines. The courts stripped 14 of the right to hold particular positions. It is not possible to put a number on the criminal cases involved, since court statistics are kept not on cases but on individuals (figures from the Public Prosecutor's Office).

Article 5

23. Neither the law nor practice has changed as regards these provisions. Ukraine is in compliance with these articles.

Article 6

24. The Supreme Council of Ukraine passed the Act on the Legal Status of Foreigners on 4 February 1994. The Act states: "Foreigners shall be entitled to apply to the courts and other State bodies for protection of their personal, property and other rights. In judicial proceedings foreigners, as parties to a case, shall enjoy the same procedural rights as Ukrainian citizens."

25. Article 33 of the Act says that if an international treaty to which Ukraine is party lays down rules other than those established in the Act, the rules laid down in the international treaty will apply.

Article 7

26. Article 6 of the Judicial System Act establishes the right of Ukrainian citizens to legal protection from attacks upon their honour and dignity, lives, health, personal liberty and property.

27. The Act of 23 December 1993 amending and amplifying various articles of the Code of Criminal Procedure regarding the rights to defence of suspects, accused persons and persons on trial introduced changes into article 44 of the Code, which states that defence counsel is allowed to become involved in a case from the moment that charges are laid or, if a suspect is detained or subjected to preventive confinement under guard, from the moment the detention or confinement order is served, but not later than 24 hours after detention occurs.

28. As of 1 January 1996, the following European conventions came into effect in Ukraine:

European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (1964)

European Convention on the Transfer of Proceedings in Criminal Matters (1972)

Convention on the Transfer of Sentenced Persons (1983).

29. On 22 September 1995 the Supreme Council passed acts of accession by Ukraine to the following conventions:

European Convention on Extradition (1957)

European Convention on Mutual Assistance in Criminal Matters (1959)

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990).

30. Ukraine signed a Commonwealth of Independent States convention concerning legal assistance and legal relations in civil, family and criminal matters on 22 January 1993.

31. As this report was being compiled, Ukraine had signed agreements on legal assistance in criminal and civil matters with the Republic of Latvia, the Republic of Estonia, the Republic of Lithuania, Poland, the People's Republic of China, Mongolia, Georgia and the Republic of Moldova.

32. A treaty with Canada on reciprocal assistance in criminal matters has been finalized. Preparations are in train for the ratification of the conventions to which Ukraine acceded in September 1995.

33. Treaties with many countries on legal assistance in criminal matters are in preparation.

Article 10

34. Article 5 of the Act on the Security Service of Ukraine, passed on 25 March 1992, defines the activities of the Service in relation to human rights: in performing its functions, the Service must uphold human rights and freedoms. Security organs and personnel must respect the dignity of the individual and treat people humanely. In exceptional circumstances certain personal rights and freedoms may be temporarily restricted, in the manner and within the limits laid down in the Ukrainian Constitution and laws, with a view to preventing and uncovering State offences. Unlawful restrictions on people's legitimate rights and freedoms are inadmissible and punishable under the law. If in the course of their duties the personnel of a security organ violate people's human rights or freedoms, the organ must take steps to reinstate those rights or freedoms, make redress for the moral and material injury caused, and call those responsible to account. The Security Service is required to explain to people in writing, within a month, why their rights and freedoms have been restricted, and the people concerned are entitled to lodge a complaint with the courts against unlawful actions by Security Service officials (employees) and organs.

35. There is an institute in Kiev and Internal Affairs colleges in Chernigov and Dneprodzerzhinsk that train, retrain and provide refresher courses for the staff of the penal correction system.

Article 11

36. The Act of 30 June 1993 amending the Code of Criminal Procedure states that the investigation of a minor offence is to be completed within a period of not more than 10 days following the identification of the culprit. The investigation of a serious offence is to be carried out within a period of not more than 10 days from the opening of the case. An Act of 23 December 1993 adds to the Code of Criminal Procedure a new section under article 143, stating that during interrogation of an accused person, defence counsel may be present if the accused person so desires; in the circumstances specified in the third section of article 46 of the Code, the presence of defence counsel is obligatory.

37. Under the Act of 23 December 1993, additions have been made to articles 21 and 43 of the Code of Criminal Procedure as regards the rights to defence of suspects, accused persons and persons on trial. Article 21 now stipulates that the person conducting a judicial examination, an investigator, a Public Prosecutor, a judge or a court must, before beginning to interrogate a suspect, accused person or person on trial, explain to him that he is entitled to defence counsel, and make an official record to that effect. Article 43-1 establishes the right of an accused person to have defence counsel, to meet his counsel before the first interrogation, and to ask the Public Prosecutor's Office to verify that his detention is lawful. Moreover, an Act of 15 December 1992 established the institution of court appeals against, and judicial verification of the legitimacy of and grounds for, arrest as a preventive measure.

38. Article 236-3 of the Code of Criminal Procedure states that an individual arrested, or his defence counsel or legal representative, may lodge an appeal against the Public Prosecutor's Office's approval of the arrest with the district (municipal) court of the neighbourhood where the particular branch of the Office is situated. Some activities have been decriminalized, leading to the repeal of 34 articles from the Penal Code: those repealed include articles 61 (sabotage), 64 (organizational activities with a view to committing particularly dangerous State crimes, and membership of an anti-Soviet organization), 65 (particularly dangerous State crimes committed against another workers' State), 74 (evasion of military service or taxes in wartime), 80-1 (failure to report a State crime), 80-2 (concealment of State crimes) and 92 (crimes against the State or public property of other socialist States).

39. By virtue of the Act amplifying and amending the Ukrainian Penal Code, Code of Criminal Procedure and Administrative Infractions Code and the Order dated 7 July 1992 by the Supreme Council governing its introduction and application, people convicted under articles 85, 87-1, 87-2, 146, 147-1, 149 section 1, 150, 151, 152, 154 section 4, 151-1, 154-4, 156, 195, 195-1, 196, 197, 214 and 224-1 of the Ukrainian Penal Code were released from serving sentence since their offences had been abolished. Sentences under articles 81, 82, 84, 86, 86-1, 149 sections 2 and 4, 155-6 sections 2 and 3, 168 and 215 section 1 of the Penal Code were revised to take account of the fact that the penalties applicable had been alleviated.

40. Article 15 of the Penal Code, on essential protection, has been clarified and sets forth the right of every individual to such protection.

41. A new article 46-2 has been added to the Penal Code, providing for execution of sentence to be postponed in the case of pregnant women and women with children under three; a new article 408-3 has been added to the Code of Criminal Procedure, governing the procedure for postponing and annulling postponement of execution in such cases.

42. In the light of the Declaration of State Sovereignty, the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Universal Declaration of Human Rights and other international regulatory instruments, Government Order No. 88 of 11 July 1991, "The basic direction of reform in the penal correction system," sets forth a thoroughly-grounded scheme of reforms in the penal correction system, calling for improvements to existing penal-correctional legislation and the formulation and passage of new laws on the subject; the subsequent expansion and reinforcement of premises and facilities at places of detention; the design and adoption of entirely new forms and methods of educational and correctional work with convicts; and the provision of staff to carry out the reforms.

43. The majority of articles in the Penal Correction Code have been amended and amplified, mostly with the effect of making the conditions of confinement for convicts more humane, regulating convicts' legal standing more precisely, safeguarding their rights and abolishing excessive restrictions. The Code now contains a new chapter on the staff (qualifications, responsibilities) of correctional institutions. On a suggestion from the Ministry of Internal Affairs, supported by the General Public Prosecutor's Office, the Supreme

49. A new penal correction code has been drafted. It was designed with the stipulations of the European Convention on Human Rights, the European Prison Regulations (1987), the Standard Minimum Rules for the Treatment of Prisoners (adopted by the United Nations in 1984) and other international agreements in mind. The requirements of the Convention against Torture are taken into account in article 9, "Basic rights of convicts", the second paragraph of which states that convicts are entitled to humane treatment and to respect for their dignity and individuality; they must not be subjected to cruel or degrading treatment.

50. An Order by the Ukrainian Cabinet dated 26 January 1994 approved a programme for bringing into line with international standards the conditions in which convicted prisoners and people in remand centres are held. Cell-space for an additional 4,000 detainees has been allocated under the

programme, and dormitory space for 8,900 convicts has been built or rebuilt. Barrack-type dormitories have begun to be refitted as blocks, as is customary in a number of European countries.

51. Rooms for religious worship have been set up in corrective-labour institutions, and meetings with clergy take place periodically.

52. Special-purpose psychological units have been added to the staff of corrective-labour institutions. These institutions have adopted progressive psychological/adaptive methods of correction and social diagnosis of convicts' personalities.

53. Every month, members of the Public Prosecutor's Office have personal interviews with convicts and people under arrest; the legitimacy of the decisions taken by institution administrators is checked against statements and reports of offences, and the justification for transferring offenders to punishment quarters is verified.

54. The prosecutors are almost entirely occupied with ensuring that administrations uphold without fail the rights and interests that the law guarantees to detainees and making sure that no detainee suffers cruel, inhuman or degrading treatment. Efforts to discover failings and violations are not evaluated on the basis of formal criteria (numbers of checks and demands for corrective action) but by the end result - the extent to which respect for the law and human rights is secured in places of detention by the ways and means available to the Office. Between 1992 and 1995, the Office carried out roughly 18,000 checks on the law-and-order situation in places of detention. On the strength of its findings, 344 people being illegally held in corrective labour institutions were set free and 1,400 were released from unwarranted confinement in punishment cells and quarters; 14,000 protests and other demands for corrective action were issued.

55. Between 1992 and 1995, corrective labour institutions in Ukraine (notably those in Donetsk, Zhitomir, Kiev, Odessa, Kharkiv, Chernigovsk and some other districts) were visited by representatives of various foreign organizations, including the embassies of Germany, the United States and the United Kingdom to Ukraine, and by Council of Europe experts. No violations of human rights were found.

56. Council of Europe experts who have the opportunity to meet arrestees and convicts, detention-centre workers and judges find that Ukrainian legislation on the whole already meets international requirements as regards safeguards of detainees' rights and legal standing.

Article 12

57. Article 4 of the Code of Criminal Procedure states: "Judges, public prosecutors, investigators and examining bodies are required, within their spheres of competence, to initiate a criminal case whenever evidence of a crime is discovered and to take all the steps laid down by law to establish when offence have taken place and see that they are punished."

58. Article 100, section 2, of the Code requires investigators and examining bodies to send the Public Prosecutor's Office a copy of their decision within 24 hours of deciding to open or not to open a criminal case.

Article 13

59. Provision has been made in the Code of Criminal Procedure for an appeal to be lodged before the courts against any decision not to open a case or to close a case, and against approval of an arrest by the Public Prosecutor's Office. A procedure for hearing such appeals has been established.

Article 14

60. The Act amplifying and amending the Ukrainian Penal Code, Code of Criminal Procedure and Administrative Infractions Code and the Order dated 7 July 1992 by the Supreme Council governing its introduction and application added a new article 81-1 to the Code of Criminal Procedure making it incumbent upon examining bodies, investigators, public prosecutors and judges to make redress for injuries caused to citizens by their illegal actions.

61. A supplementary article, No. 81-1, was added to the Code of Criminal Procedure on 22 April 1993; it concerns reimbursement of the costs of in-patient treatment for crime victims.

62. Ukrainian citizens are entitled, under the Act on redress for injuries caused to citizens by the illegal actions of investigative and examining bodies, the Public Prosecutor's Office and the courts, to redress for their losses. Redress is made in full, irrespective of the guilt of the officials (investigative and examining bodies, the branch of the Public Prosecutor's Office or the court concerned).

63. As regards rehabilitation, the individual concerned must apply to the branch of the Public Prosecutor's Office or the court that issued the most recent judicial ruling. If he disagrees with a court finding (order), he may lodge an appeal to have it set aside with a higher court.

Article 15

64. Neither the law nor practice has changed in this regard.

Article 16

65. As regards this article, all acts belonging to the category of torture and other cruel, inhuman and degrading treatment and punishment are banned throughout Ukraine. Ukrainian domestic law does lay down procedures for bringing to justice any persons committing such illegal acts.